Campo Slacks, Inc.; J & E Sportswear, Inc.; JBC of Madera, Inc.; and Joseph Campolong, Sr. *and* **Pittsburgh Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO.** Cases 6-CA-13841, 6-CA-13904, 6-CA-13928, and 6-CA-14094

March 21, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On August 18, 1982, Administrative Law Judge Harold Bernard, Jr., issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the Charging Party Union filed a brief in opposition to the Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, and hereby orders that the Respondent, Campo Slacks, Inc.; J & E Sportswear, Inc.; JBC of Madera, Inc.; and Joseph Campolong, Sr., Houtzdale and Madera, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten the Union or employees with unlawful acts such as changing terms in the collective-bargaining agreement with Pittsburgh Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, unless grievance arbitration is postponed, or carry out such a threat.

WE WILL NOT make changes in the collective-bargaining agreement with Pittsburgh Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, during the term of such agreement without the Union's consent.

WE WILL NOT repudiate the collective-bargaining agreement.

WE WILL NOT fail to honor union requests for information necessary and relevant to the Union's administration and enforcement of the collective-bargaining agreement.

WE WILL NOT unilaterally implement provisions dealing with "local issues" without the Union's consent or until a valid impasse in bargaining exists beforehand and WE WILL NOT unilaterally change established vacation practices.

WE WILL NOT fail to remit to the Union dues deducted from employee wages under the contract with the Union or to make contributions to the insurance fund.

WE WILL NOT refuse to arbitrate grievances as provided in the collective-bargaining agreement.

WE WILL NOT in any other manner interfere with, coerce, or restrain our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL honor and abide by the terms of our contract with the Union.

WE WILL make employees whole for any losses suffered as a result of our repudiation of the contract, failure to abide by any of its terms, and our unilateral changes to the contract or established working conditions by payments designed to return them to their *status quo ante.*

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[1] For the reasons set forth at fn. 18 of his Decision, we agree with the Administrative Law Judge that Joseph Campolong, Sr., is individually liable for the make-whole remedies imposed herein. See *Master Food Services, Inc., Noah Robinson and Al Williams d/b/a A & W Catering Co.*, 262 NLRB 804 (1982); *Ski Craft Sales Corp.*, 237 NLRB 122 (1978); *Ogle Protection Service, Inc., and James L. Ogle*, 149 NLRB 545, fn. 1 (1964), modified on other grounds 375 F.2d 497 (6th Cir. 1967).

In an Errata issued on September 13, 1982, the Administrative Law Judge deleted the terms "Domestic Steel Co." from his Decision at fn. 19. The foregoing deletion should read "Domestic Steel Sales Co., Inc." In addition, at the first paragraph of sec. II,F, of his Decision, the Administrative Law Judge erroneously describes attorney Woicik's threat as occurring on September 9, 1980. As noted elsewhere in his Decision, the threat, in fact, was made on September 26, 1980.

At the final paragraph of sec. II,B, of his Decision, the Administrative Law Judge cites the case of *Quick-Lahmann Express, Inc.*, 262 NLRB 220 (1982), in support of his finding that Respondent's failure to remit dues to the Union and make payments into the insurance benefits plan violated Sec. 8(a)(5) and (1) of the Act. *Quick-Lahmann*, however, raises no issues pertinent to the instant case and we find its citation inappropriate herein.

[2] In view of several inadvertent errors and omissions in the Administrative Law Judge's notice to employees, we shall substitute the attached notice for that of the Administrative Law Judge.

WE WILL reimburse employees, as well, for expenses incurred by them due to our failure to make contributions to the insurance fund as required in our contract with the Union, with interest.

WE WILL bargain in good faith with Pittsburgh Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, as the exclusive representative of employees in the following unit and, if an understanding is reached as to previously unresolved matters, WE WILL embody it in a signed written agreement:

All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees employed by Campo Slacks, Inc. at its Madera, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.

WE WILL, upon the Union's request, rescind all changes in terms and conditions of employment made as a result of our unilateral action.

CAMPO SLACKS, INC.; J & E SPORTSWEAR, INC.; JBC OF MADERA, INC.; AND JOSEPH CAMPOLONG, SR.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD, JR., Administrative Law Judge: I heard these consolidated cases on June 18, 19, and 25, 1981, in Clearfield, Pennsylvania, pursuant to complaint allegations that Respondent violated Section 8(a)(5) of the National Labor Relations Act, as amended, herein called the Act, by (a) failing to implement, unilaterally modifying, and later entirely abrogating a collective-bargaining contract with the Union covering employees at Campo Slacks, Inc., during the period October 1980 to April 1981; and (b) by refusing the Union's requests for information relevant to its collective-bargaining responsibilities.

Respondent admits certain matters but denies that it committed any unfair labor practices. All parties appeared at the hearing. Each was represented by counsel and was afforded full opportunity to be heard, to introduce and meet material evidence, to examine witnesses, to present oral argument, and to file briefs. Post-trial briefs were filed by all parties.

The issues are as follows:

1. Does the Board have jurisdiction over the named Respondent?

2. Was a collective-bargaining agreement in effect after December 18, 1979?

3. Did Respondent unlawfully cease transmittal of union dues checked off under a contract with the Union?

4. Did Respondent unlawfully cease payments to the employees' insurance fund?

5. Did Respondent unilaterally modify several contract provisions in violation of the Act?

6. Did Respondent repudiate the entire agreement between the parties?

7. Did Respondent unilaterally change vacation scheduling practices in violation of the Act?

8. Did Respondent unlawfully threaten to cease bargaining with the Union unless grievance arbitration was postponed?

9. Did Respondent unlawfully refuse to grant the Union information relevant to the Union's collective-bargaining responsibilities under the Act?

10. Has Respondent failed to bargain in good faith with the Union?

Upon the basis of the entire record, including my evaluation of the demeanor of the witnesses and the briefs filed by the parties,[1] I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The complaint alleges, *inter alia*, and Respondent admits, that Campo Slacks, Inc., and JBC of Madera, Inc., are employers and corporations engaged in the manufacture and nonretail sale of clothing in Houtzdale and Madera, Pennsylvania. The complaint further alleges that Respondent annually ships products valued in excess of $50,000 directly to points outside Pennsylvania and annually purchases materials valued in excess of $50,000 directly from sources outside Pennsylvania. Respondent admits such facts pertaining to Campo and JBC and that their operations fall within the Board's jurisdiction. (G.C. Exhs. 1W and 1M.) Further, in a prior case involving Campo and J & E Sportswear, Inc.,[2] wherein Board jurisdiction was assert, the latter was admitted and found to be a joint employer or part of a single business with, *inter alia*, Campo due to their affiliation in a business enterprise with common ownership and control of labor relation policies.[3] Finally, regarding Joseph Campolong, Sr., the record in this case and the prior *Campo I* supports the conclusion that he is, under law, clearly the

[1] In addition to its initially filed post-hearing brief, Respondent counsel submitted a "Reply Brief." While the former has been considered, in the absence of any provision for filing same in the Board's rules the latter has not been accorded any weight. The Charging Party's unopposed motion on brief to correct obvious transcript reproduction errors is granted.

[2] *Campo Slacks, Inc. and J & E Sportswear, Inc.*, 250 NLRB 420 (1980), enfd. 659 F.2d 1069 (1981).

[3] Respondent's motion to dismiss as to J & E because said Company allegedly ceased business in October 1979 thereby time-barring complaint allegations of any wrongdoing by J & E is denied inasmuch as J & E (like JBC to an extent) is in the picture for remedial purposes, such as information-providing and possible make-whole payments rather than for finding separate violations *vis-a-vis its* prior employees. Moreover, Respondent's reliance on *Peter Kiewit Sons' Co. and South Prairie Construction Co.*, 231 NLRB 76 (1977), for the tenet that a single employer status, here occupied by the named employers, does not mean a single unit exists, or that employees of one, i.e., JBC, are covered by the contract unit of another, i.e., Campo and J & E, for purposes of finding a *violation* of the Act with respect to such employees, has no application herein, where the General Counsel included JBC and J & E for remedy purposes only.

commanding presence or *alter ego* behind the three named entities, able to close or open the business at will (he closed J & E and decided to keep JBC open), personally soliciting business and personally guaranteeing corporate indebtedness, or personally funding the business and with his daughter, sons, and wife as corporate subordinates or employees running daily affairs. Thus, Joseph Campolong, Sr., owns 100 percent of the stock of JBC wherein he is president and which, in turn, owns 100 percent of the stock in Campo Slacks, the latter having no bank account or assets and getting all its work from JBC with no written agreement to memorialize the arrangement. Campolong Sr. bargained in negotiations with the Union on behalf of Campo at all the negotiations in 1979 and 1980, along with his counsel, made the decisions with him, including decisions on wages in such negotiations, and, with his counsel, Campolong decides daily employee problems or questions. Although his son David Campolong answers employee questions as well, Campolong Sr. has higher authority, and has exercised such authority in employee compensation matters. Campolong Sr.'s son, David, is vice president of JBC; his wife is secretary-treasurer of JBC, and his son, Joseph Jr., is plant manager at Campo Slacks, which has no officers or directors. Campolong Sr. loaned JBC $100,000 in the last several years—for which he has not been repaid—which money he eventually gave to JBC as capital investment and testified that he has the final word on labor relations at Campo Slacks. When testifying as to how he spends his time, Campolong Sr. testified he "mostly" solicited sales for JBC and Campo. He also approves all business deals.

The payroll and accounting for Campo Slacks is handled through JBC where bills, joint tax returns, employee W-2 forms, checks, and general office work is performed for both including work by Campolong's daughter Brenda Campolong. There is also evidence that on some occasions a truck titled to Campo Slacks is used to transport raw materials and in the event it is necessary (a small percentage of the time) goods manufactured by Campo may be warehoused in a JBC warehouse.

Based upon the foregoing widespread commonality in ownership, control, operational activities, and labor relations, I find that the named entities constitute a single integrated business enterprise, or a joint employer, if you will, and that Joseph Campolong, Sr., present and represented at the hearing and who testified therein is an *alter ego* personnally responsible for this common enterprise, which, I further find are employers (or an employer) engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. *DMR Corp. and Harrill Electric Contractors, Inc.*, 258 NLRB 1063 (1981); *Bryar Construction Company and M & C Coal Company*, 240 NLRB 102 (1979); *G and M Lath & Plaster Co., Inc.*, 252 NLRB 969 (1980); *Weather Tamer, Inc. and Tuskegee Garment Corporation*, 253 NLRB 293 (1980); *Certified Building Products, Inc.; and Carl Fidler*, 208 NLRB 515; *Radio & Television Broadcast Technicians, Local 1264, IBEW* v. *Broadcast Service of Mobile Inc.*, 380 U.S. 255, 256–257 (1965); and *Ogle Protection Service, Inc. and James L. Ogle*, 149 NLRB 545, 546, fn. 1 (1974).

The Union admittedly is a labor organization within the meaning of Section 2(5) of the Act, and I so find.

I further find that the Union, the designated collective-bargaining representative for employees in successive bargaining agreements since 1969, has been and is the exclusive bargaining representative for employees under the Act in the unit described below.

II. THE UNFAIR LABOR PRACTICES

A. *Background—Whether a Contract Was in Effect After December 18, 1979*

Following expiration of their collective-bargaining agreement in September 1979, the Union and Respondent met to negotiate a new contract on October 18, November 1, and December 18, as well as on later occasions discussed below.

During the December 18 or third negotiating session, in the aftermath of some usual give and take in the earlier sessions, the Union informed Respondent's negotiators it was dropping its "local issues" (described in G.C. Exh. 5), dropping its pension provision—as to which Respondent had requested "relief"—and that it was agreeing to Respondent's position on limiting retroactivity of a wage increase to December 18. The Union further agreed to discuss Respondent's five local issues Respondent had presented on October 18 at the parties' earlier first meeting. It is clear that the five management proposals specifically consisted of: (1) a management-rights clause, (2) a split averages' provision change whereby employee pay is determined by employee average pay plus minimum wage, (3) a vacation pay formula based upon a percentage of an employee's annual earnings, (4) a provision for mandatory overtime with a "right of discipline," and (5) incorporation into employee piece rates of a 45-cent hourly payment then on the clock.

In any event, this cleared the way for the parties to enter into a stipulation expressly extending their prior collective-bargaining agreement for an additional 3-year term, expressly providing for hourly wage increases effective that day, as well as on September 1, 1980, and September 1, 1981, and for insurance contributions. (G.C. Exh. 9.) The agreement further provided for an additional holiday, "*effective third (3rd) year of contract*" (emphasis supplied), elimination of employee pension benefit and, at "Article V Local Issues," for the parties to negotiate further, ". . . So-called 'local issuances'" for 60 days, agreeing to make no change in the contract regarding such issues during said period. It is clear that his stipulation *en haec verba* extended the parties' collective-bargaining agreement for a new 3-year term, and I so find. The only "local" subjects them remaining open for negotiations were those proposed by Respondent on October 18, and listed above, the Union having withdrawn its own "local issues" proposals prior to the parties' new agreement, and I so find. Thus, Union Negotiator Adrian DeMarco, business representative, testified without contradiction that the parties agreed to a money package and to discuss (Respondent's) local issues, but everything (else) was to remain "intact." He testified further without contest that by local issues he understood those on the

table on December 18. While the above findings stand on clear and uncontradicted testimony and require no additional proof, it is further noted, as argued by the counsel for the Charging Party in his brief that this finding is consistent with subsequent conduct of the parties, including references by them to a current "contract" even on dates following the 60-day period for negotiations on the local issues. Further, such finding is consistent with Board precedent holding that the parties, in situations where they enter an agreement providing for the negotiation of modifications, later have consumated an agreement notwithstanding such reopener-type provisions. *Joseph McDaniel, an Individual Proprietorship d/b/a Custom Color Contractors*, 226 NLRB 851 (1976); and *Central Plumbing Company*, 198 NLRB 925 (1972).

It is further found that the appropriate bargaining unit is:

> All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees employed by Campo Slacks, Inc. at its Madera, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.[4]

B. *The Cessation of Dues Remittances and the Contributions to the Employees' Insurance Plan by Respondent*

Under the renewed and extended contract, evidenced by the stipulation (G.C. Exh. 9 and by G.C. Exhs. 3(a) through (d)), it is uncontroverted that Respondent was bound by its terms to remit checked-off dues to the Union, and to make periodic payments into an employees' insurance fund. (G.C. Exh. 3(a) (art. XVIII, p. 12), and G.C. Exh. 3(b) par. 5, pp. 3 and 4.)

(1) Regarding the remittance of dues, the parties stipulated that Respondent failed to send the Union checked-off dues deducted from employees' wages between May and October 1980. In addition, there is uncontroverted testimony by the Union's vice president and district joint board manager, Henry Dropkin, that Respondent, as of the hearing date June 25, 1981, had not remitted any employee dues deductions since the previous December 13, 1980.

(2) Regarding issuance payments, the General Counsel points out in his brief that the complaint alleges the unlawful refusal to make such payments on and after the 10(b) date only, *viz* April 14, 1980,[5] even though Campolong Sr. admitted no such payments had been made since April 1979. Campolong's admission is buttressed further by the testimony of Dropkin that Respondent has made no such payments for 3 years and further by the uncontroverted findings in an arbitration award admitted into evidence. (C.P. Exh. 13.) It is further clear and uncontested that the Union has sought to secure Respondent's adherence to its contractual obligations in this regard only to meet with Respondent's asserted "inability to pay" coupled with a refusal to honor such committment or even to provide the Union with information requested by union counsel to assist in pressing this claim, estimated by Dropkin to amount, at the time of the hearing, to over $100,000.

There can be no other conclusion under law then that by repudiating the terms in its then current contract with the Union by which it was required to remit dues deductions and make insurance funds payments, Respondent acted in derogation of its bargaining obligation under Section 8(d) of the Act. *Morelli Construction Company*, 240 NLRB 1190 (1979). Equally clear is the established maxim that economic necessity, here merely professed, "is not cognizable as a defense to the unilateral repudiation of monetary provisions in a collective-bargaining agreement." *Schuener Construction Company*, 258 NLRB 1275 (1981), citing *Morelli, supra*. I find, accordingly, that by refusing and failing to remit dues to the Union and make payments into the insurance benefits plan as required by its then current contract with the Union, for the periods noted, Respondent violated Section 8(a)(5) and (1) of the Act. *Domestic Steel Sales Co., Inc.*, 258 NLRB 785 (1981); *Hyde Park Construction Company*, 258 NLRB 849 (1981); *Quick-Lahmann Express, Inc.*, 262 NLRB 220 (1982); *Merryweather Optical Company*, 240 NLRB 1213, 1215 (1979); and *Independent Stave Company*, 248 NLRB 219 (1980).

C. *Whether Respondent Unlawfully Modified Several Contract Provisions*

Following their December 18, 1979, meeting the parties attended eight or nine negotiating sessions, the final one on this record placed on May 14, 1981. There were, as is normally the cases many points of contact along the way, where positions were taken in phone contacts, individual person-to-person communications, separate grievance meetings, and arbitration sessions, as well as mediation proceedings. All letters, minutes, exhibits, and testimony concerning these contacts, as well as the negotiating sessions, have been reviewed for relevancy to the issues.

As found above, from December 18, 1979, onward, the parties were bound by a 3-year contract.[6] In this agreement the parties were on record to having agreed to further negotiations only as to Respondent's "local issues," described above. As is often the case, when parties to such an agreement have the security or certainty of such agreement behind them, they venture even beyond the subjects left open for further discussion and possible agreement; here Respondent's five local issues, and, in an

[4] This is the unit (absent the J & F employee unit) found appropriate in *Campo I* cited above, and there are no facts or contention in the record to warrant any contrary finding.

[5] The charge was filed October 14, 1980. The General Counsel correctly points out, of course, that the violation continued on *into* the 10(b) period—an observation both literally and legally accurate since the indebtedness and refusals to pay continued after April 14, 1980, and there were, as well, fresh refusals to pay amounts past *within* the 10(b) time frame.

[6] Under the circumstances, I find Woicik's January 7, 1980, letter as Respondent counsel to mediation and conciliation wherein he notes, ". . . no agreement has been reached" (G.C. Exh. 10) nothing more than a bargaining tactic given the earlier bilateral agreement and Respondent's later references to a "contract." Whatever the motive, for reasons discussed below, such would not operate to cancel the clear language creating the earlier contract.

effort to see whether the new bargaining context will allow it, seek advantages in other areas. The freedom to do this contributes, in the end, to more stabilizing contracts and is guaranteed by the established maxim that neither side can be required to accept proposals in such areas, i.e., midterm modifications, without its consent. *The Standard Oil Company (Ohio)*, 174 NLRB 177, 178 (1969).

The record in this regard shows that Respondent, in a meeting on January 28, 1980, with Union Business Representative Adrian DeMarco, Sr. (the parties' fourth negotiating session), raised proposals concerning *both* the original five local issues, and other matters, *viz* holidays, and a 1,400-hour eligibility standard for vacation pay, DeMarco indicating in testimony that Respondent counsel Woicik was to prepare "this" in writing and get back to the Union because DeMarco was unfamiliar with how these proposals would be implemented—how they would work.

In fact Woicik did send DeMarco written proposals in a letter dated June 20, 1980. Since the record is silent as to whether or not there were any intervening sessions between the parties, assumedly there were none given the detailed testimony throughly covering all contacts between the parties, it is unusual that Woicik's letter would couch its contents as embodying "substantially our agreements on contract changes." (G.C. Exh. 16(a).) Equally surprising and totally unwarranted by the facts is that Woicik included in the alleged "agreed-to changes" matters such as trial periods for new employees, specifically subjecting employees who refuse overtime to discharge, past and future wage increases for piece rate workers to be incorporated into the piece rate, and an extension of the no-strike provision to cover all disputes,[7] which had not even been proposed on January 28. (G.C. Exh. 16(b).) In addition, the proposal on holiday eligibility was outside the scope of Respondent's original five local issues, leaving only three such proposals fairly within the ambit of subjects further after December 18, 1979; *viz*, split averages, a management-rights clause, and vacation eligibility. But this is actually not a list of all the proposed modifications set forth on the face of Respondent's proposal. As alertly pointed out in the Charging Party's brief, Respondent's proposed management-rights clause (a topic within the local issues) was characterized as a new "Article XIX," which would have *a fortiori* supplanted the existing article XIX entitled "More Favorable Practices," a matter previously unmentioned and entirely outside the local issues. (G.C. Exh. 3A, p. 13.) The same holds true for Respondent's no-strike clause proposal, which as already noted had not even been discussed on January 28. This proposal, styled to be an "amendment" actually reads:

> 7. Article XX of the Agreement is amended *to read* (emphasis supplied) as follows: *"No Strike-No Lockout"*

There then follows a paragraph limited to the no-strike provision alone, with no reference to the preexisting article XX language on successorships, thereby eliminating same.[8] (See also C.P. Exh. 3.)

On July 24, 1980, Woicik wrote DeMarco that the Company had "no alternative" but to put these proposals into effect on the following August 18 and to do so retroactively. This was another strange letter of dubious motive given the substantially expanded and previously undiscussed modification proposals, which forseeably warranted considerable time for union study, not to mention the fact as assuredly was known or could have become known by Woicik that the Union's offices were closed, as was Respondent's plant about that time, for a regular 2-week long midsummer vacation. In addition, Respondent's proposal for retroactivity in the package was likewise a new wrinkle not touched upon earlier, though there are arguments on both sides whether the period for implementation, at least on the "5 local issues" area would be encompassed within the parties' December 18, 1979, agreement. On August 6 by letter to Woicik, Union Vice President Henry Dropkin objected to the proposed unilateral modifications inviting further negotiations and expressly noting that the Union had never accepted them, and that the proposals were not promulgated in accordance with the parties then current agreement. (G.C. Exh. 18), Respondent at that time did not proceed to implement the proposals.

The parties met on September 9, 1980 (fifth meeting), and the proposals were gone over, the union representatives noting that they thereby were specifically not waiving the Union's right to protest the proposals as not being part of the "local issues" for which the parties had allowed further negotiations—that the proposals were beyond the scope of such local issues. (Resp. Exh. 7.) There was discussion on Respondent's proposals, clarification in meanings, union agreement with the concept of management rights to operate at will within the framework of the contract assuming "just cause" and no agreement on extending the no-strike clause to insurance contribution matters.

At the sixth meeting, on September 26, the Union submitted counterproposals including a willingness to agree to an extension of the trial period for new employees to an additional 30 days; willingness to accept some of the overtime proposal with a 3-day posting in advance and no discipline; and nearly complete agreement with Respondent's proposal for a new article IV, section 8, providing for wage increases to be incorporated into the piece rate. (G.C. Exhs. 24 and 16(b), p. 2.) In the face of this progress Woicik's declaration later in that meeting that he would implement certain Respondent proposals unilaterally unless the Union agreed to postpone an arbitration hearing, scheduled for October 1, claiming further the Union was not bargaining in good faith[9] and even further that there was an impasse in negotiations was, at the time the statements were made, both unac-

[7] Under then existing contract provisions a strike over nonpayment of insurance contribution was not banned.

[8] Either by typographical error or otherwise the successorship article and the article on contract terms are both numbered XX. (G.C. Exh. 3A, p. 13.)

[9] This accusation apparently arose on the heels of union notification to Woicik that a member on its negotiating team had taken ill and had to leave.

countable and with serious portent for collective bargaining. Nevertheless, a further date for negotiations was set, which transpired on October 8, the seventh meeting.[10]

At this seventh meeting further union counterproposals were made on the extension of the trial period for new employees, overtime, vacation eligibility, and holiday requirements, and the Union informed Respondent that it had no problem with a management-rights clause if reasonably applied. Respondent rejected the counterproposals but offered a provision allowing for arbitration of certain matters. Matters remained unresolved. The parties again met on October 30, 1980, but without success, a large stumbling block, according to Union Vice President Dropkin, being Respondent's extraordinary arrearages in making payments to the insurance funds, resulting in serious bill-paying problems for union members. Nonetheless, Dropkin informed Woicik he would try to come up with something and call him in 2 weeks. Dropkin's testimony under very precise and continued cross-examination that he never said there could be "no" contract without a settlement of the insurance arrearages question was uncontradicted and is credited. I find the Union raised the matter as an important one—not as a condition to a resolution in negotiating. Respondent's "intimation" to the contrary is therefore rejected.

At any rate, Dropkin later did call Woicik on two occasions to discuss the proposed changes and testified in undenied testimony under examination by Woicik that the latter manifested disinterest in the changes, and was nasty and "trying to destroy the Union."

By telegram dated November 25, 1980, Respondent notified Dropkin that it was unilaterally putting into effect its final contract offer,[11] retroactive to the "expiration" of the prior contract. Woicik's telegram went on to say that Respondent would be pleased to continue negotiations at the Union's convenience. (G.C. Exh. 31.) Dropkin, in turn, objected to Woicik's announced unilateral action by letter dated December 3, 1980, also indicating the Union stood ready to discuss the issues. (G.C. Exh. 32.)

The conclusions obtaining on some of the issues arising from the foregoing flow quite readily from the facts. Since it has been already found that a binding collective-bargaining agreement lasting for 3 years after December 18, 1979, existed, and that the parties agreed only to negotiate further on five local issues sought by Respondent, it follows that Respondent's admitted unilateral changes to that agreement in respects where there had been no agreement for later negotiations, *viz*, matters outside the five local issues, clearly constituted unlawful midterm modifications violative of Sections 8(d) and 8(a)(5) and (1) of the Act. *Inta-Roto, Incorporated*, 252 NLRB 764, 768 (1980); *Oak Cliff-Golman Baking Company*, 207 NLRB 1063 (1973); *Nassau County Health Facilities Association, Inc., et al.*, 227 NLRB 1680 (1977); and *The Boeing Company*, 230 NLRB 696.

Moreover, Respondent's reference to an impasse as justification for its unilateral action is totally misplaced and without any legal support since the contract matters outside Respondent's five local issues (identified above in detail) could not be lawfully modified without the Union's consent which here was expressly withheld irrespective of whether or not there was an impasse. *Inland Cities, Inc.*, 241 NLRB 374 (1979). In short the parties to a contract need not bargain in midcontract over matters not covered by a reopener clause, *Leveld Wholesale, Inc.*, 218 NLRB 1344, 1349 (1975); *Inta-Roto Incorporated, supra; Standard Oil Company, supra*; and *Los Angeles Marine Hardware Co., et al.* 235 NLRB 720, 735 (1978).

While slightly apart from the foregoing analysis, the answer to the question—whether Respondent's unilateral implementation of its proposals on matters fairly *within* the ambit of the parties' "reopener" (Respondent's five local issues) was unlawful as well—flows just as readily from the facts. In the first place a careful review of the record discloses no basis to conclude that the parties were at an impasse on the local issues as to which Respondent announced its unilateral modification. Regarding one of those items, overtime, there had been steady progress in negotiation, as proposals were exchanged and the notice requirement as well as type of disciplinary action was evolving to conform to the parties, bargaining. (C.P. Exh. 3.) As to split averages, or midpoint, as noted there had been movement from the original proposal by Respondent to provide for arbitration absent agreement and, although the Union had not, as of the preparation of Charging Party's Exhibit 2, agreed to any change there was no indication whatsoever that movement in other than current discussions about other matters might not have provoked movement here to agreement. Regarding a third item within the five local issue category, the Union in fact agreed to incorporate future raises into the piece rates, but not the 45 cents negotiated earlier, thereby substantially agreeing with this proposal. Regarding a fourth such subject, the Union and Respondent were not far apart on the matter of eligibility standards for vacations—though the distance between their two positions certainly required further negotiations before an agreement could be confidently predicted. Certainly, the difference between a 1,440-hour standard and 800 hours did not defy narrowing sufficient to make an agreement possible. Finally, on the matter of the management-rights clause two observations are in order. First it is clear that the parties' versions of such a proposed clause were not drastically different so their respective positions did not defy reasonably easy mutual accommodations. However, it must also be noted that Respondent's management-rights proposal was really twofold. One side of it called for such a clause, the other required *deletion* of the *then existing clause XIX* in the contract relating to "More Favorable Practices," a subject clearly outside the five local issue coverage. Accordingly, on both counts, absence of impasse and being

[10] At the October 1 arbitration, Woicik announced that Respondent's contract provisions involving issues coming before the arbitrator had already been implemented retroactive to September 1, 1979, and that, according to DeMarco's undenied testimony, Woicik stated he did not feel at that point that there was a contract. The parties nevertheless proceeded with arbitration, arranging for the arbitrator to decide the issue on both the assumption of a pre and post change contract provision securing two awards. In his brief to the arbitrator, Woicik stated Respondent made the changes unilaterally. (G.C. Exh. 29, p. 1.)

[11] A detailed listing is set forth in C.P. Exh. 3; while the Union's then most current set of counterproposals is contained in C.P. Exh. 2.

outside the "reopener," this proposal on management rights could not be unilaterally imposed. For the foregoing reason as to the above-remaining subjects, *viz* absence of impasse—the facts showing it is not possible to conclude that further bargaining would be futile as there were rays of hope—I conclude that Respondent's implementation of proposals even within the ambit of the parties' agreement to negotiate after December 18, 1979, was plainly unlawful conduct violative of Section 8(a)(5) and (1) of the Act. *Inta-Roto Incorporated, supra; Taft Broadcasting Co., WDAF AM-FM TV*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968); see also *Seattle-First National Bank*, 241 NLRB 751, 751–753, (1979) [vacated by 265 NLRB No. 55 (1982)], in 241 NLRB 751, the Board noted *inter alia* that "Mere discussion of unresolved items falls far short of unlawful, persistent demands to the point of impasse" (p. 753.).[12]

D. *Respondent's Repudiation of the Collective-Bargaining Agreement and the Unilateral Change of Vacation Practices*

(1) Following the Woicik and Dropkin exchange of letters in November and December 1980 Union counsel Leonard Schneider wrote Woicik officially requesting the arbitration of seven grievances by letter dated January 16, 1981. Woicik, who, in a brief to arbitrator Joseph on March 10 made a similar claim (G.C. Exh. 33(a), fn. 5), replied on April 7, 1981, denying arbitrability of the grievances on the ground that "labor contract negotiations for a contract renewal are still open and not finalized," thereby effectively, on Respondent's behalf, unilaterally canceling the existing arbitration clause (art. 15 of the contract). (G.C. 3A.) Respondent's position, that it appeared the Union had a right to strike because of the "unfinalize" negotiations and therefore it, Respondent, could refuse arbitration is unsupported. As found herein earlier, the contract was firmly in place during this period so that Respondent's midterm cancellation of the arbitration provision was clearly a violation of Section 8(a)(5) of the Act. Thus, it is undenied that the grievances for which the Union sought arbitration concerned mandatory subjects of bargaining dealing directly with employment terms and conditions with which the agreement to arbitrate was "inextricably intertwined" so that its cancellation was an unlawful unilateral change of a provision dealing with a mandatory subject of bargianing. *Sea Bay Manor Home for Adults*, 253 NLRB 739 (1980). Moreover, even under Woicik's distorted analysis—being "between contracts"—Respondent was clearly not privileged to refuse to abide by the arbitration provision as to a matter arising during the life of the contract. *Digmor Equipment and Engineering Company, Inc.*, 261 NLRB 1175 (1982). Since this matter was thoroughly litigated at the hearing, though not alleged in the complaint, I find Respondent's conduct in this regard an additional unlawful act. *Stokely-Van Camp, Inc.*, 259 NLRB 961 (1982); and *Merryweather Optical Company*, 240 NLRB 1213 (1979).

To worsen matters, in the April 7, 1981, letter Woicik also took pains to declare Respondent's position to be, in effect, that there was *no contract* at all stating, in addition to an earlier paragraph concerning the arbitration clause alone that:

> It is our position that the Company and the Union currently are between labor contracts.

I find that Respondent thereby entirely repudiated its collective-bargaining contract with the Union in plain violation of fundamental law, thereby still further violating Section 8(a)(5) and (1) of the Act. *Carrothers Construction Company, Inc.*, 258 NLRB 175 (1981).

(2) The credible and undenied testimony by employee Joan Lightner shows that Respondent uniformly followed the practice of shutting down the plant during the employees' 2-week annual summer vacation, the first 2 weeks in July. Lightner testified that this practice had been followed every year for 13 years.[13]

The record shows that on April 28, 1981, Joseph Campolong, Jr., informed Lightner, local union president since 1978, that the vacation period that year, according to his father's decision, would be "one" week in July and 1 week in September and that the shops would be closed those weeks (rather than the first 2 weeks of July as was the usually uninterrupted practice). Lightner objected but Campolong indicated the notice would be posted on the bulletin board. Later Union Representative DeMarco also objected on the grounds the contract called for vacation being scheduled the first 2 weeks in July. During discussion over an arbitration award later the Union again objected to the proposal, Respondent continuing its position as to when it wished to close the plant.

Thereafter, on May 15, 1981, Respondent posted a notice on the employee bulletin board announcing the plant would be closed the first week in July and the first week in September. The notice also stated that (unlike the established practice) the plant would be opened the second week in July though employees were were free to take their vacations at such time. Respondent correctly notes that the contract language *en haec verba* refers only to when *vacations* must be scheduled so that its action as described in the employee notice (G.C. Exh. 37) allowing employees to continue taking the first 2 weeks in July on the surface of things appeared not to violate the contract. However, there was a long-established 13-year practice paralleling the administration of the vacation provision which called for the plant to be shut down during the first 2 weeks in July vacation period. Employee interests and rights evolved in the course of this practice becoming established and those rights or expectations became woven into the settled fabric of working conditions. When this occurred, as it

[12] Even under a strained interpretation of the parties' bargaining postures, at worst only somewhat static, Respondent could not make unilateral changes in the "local issues" area on the grounds of "impasse" given its commission of unfair labor practices helping create same and violating Sec. 8(a)(5) of the Act. *Hudson Chemical Company*, 258 NLRB 152 (1981); *Newspaper Printing Corporation*, 232 NLRB 291 (1977). *Atlas Metal Parts Co., Inc.*, 252 NLRB 205, 223 (1980); and *Seattle-First National Bank, supra.*

[13] Except on an occasion when the Union had agreed to do otherwise, only to learn of problems arising for employees not eligible for the vacation benefit when they tried to sign up for unemployment compensation.

had done by 1981, it is clear that such a condition of employment, whether in the contract or outside its terms, and whether or not measurable in money could not then be unilaterally modified or canceled. *Laredo Coca Cola Bottling Company*, 241 NLRB 167 (1979). Respondent's reference to its willingness to discuss the matter with the Union as supporting the view that its action was not unilateral is without merit as I find such conversation constituted mere notification of *a fait accompli*. It is concluded therefore, that by changing its vacation scheduling practice in the respect noted, *viz* not closing the plant in the second week of July, Respondent unilaterally changed a term or condition of employment without bargaining with the Union thereby violating Section 8(a)(5) and (1) of the Act. *The Sacramento Union*, 258 NLRB 1074, fn. 12. (1981).

E. *Respondent's Refusal To Furnish Information*

By letter dated August 25, 1980, to Woicik the Union requested information from Respondent concerning the identification of officers, assets, sources of assets, and creditors of Campo and J & E as well as officers and shareholders of JBC of Madera. The plain and uncontested reason for seeking the information was to enable the Union to assist in administering the insurance fund agreement to which Respondent was a party, that is, to gather information directly relevant to the Union's duty to seek enforcement of the fund's provisions via the available legal remedies for securing payment by Respondent of its arrearages. Respondent admitted its refusal to provide such information in its answer. (G.C. Exh. 1-M(5).) At the hearing Respondent's defense was that such information was being submitted via depositions in another action against Campolong personally, but on cross-examination this turned out not to be the case. Since the information was undeniably necessary and relevant to the matter of delinquency in Respondent's payments—*viz* who or what entities in the closely knit Campolong family of companies possessed reachable assets to satisfy the payments owed to the fund and through the fund to employees represented by the Union, it is concluded that Respondent's refusal to furnish same violates Section 8(a)(5) of the Act. *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967); *Associated General Contractors of California*, 242 NLRB 891 (1979). The Union also requested information concerning Respondent's timestudies in a letter dated August 26, 1980. It is not controverted that this information undeniably in Respondent's possession was needed by and relevant to the Union to enable the Union to prepare for the further processing of grievances referred to (G.C. Exhs. 22 (a) and (b)) at the arbitration hearing scheduled for October 1, 1980. Respondent's only defense to not providing the information is that the Union declined to give Respondent its (the Union's) timestudies. Respondent presented no proof tending to establish the existence of such union studies, or any basis to conclude the one was contingent upon the other. Moreover, Respondent did not provide any of the requested information until October 1, 1980, the morning of the hearing itself, over a month after the request, an unexplained and unjustified delay in meeting its statutory obligation.[14] I therefore find Respondent failed to timely provide the requested information in violation of Section 8(a)(5) of the Act. *Aeolian Corporation, Ivers & Pond Piano Division*, 247 NLRB 1231, 1243–45 (1980).

F. *The Threatened and Implemented Unlawful Unilateral Action in Reprisal for the Union's Refusal To Postpone Arbitration*

There is no dispute that Woicik threatened the Union and bargaining unit employees with unlawful implementation of contract provisions involved in a then forthcoming arbitration unless the Union were to agree to postpone the October 1, 1980, arbitration during the parties' fifth negotiating session held on September 9, 1980, described hereinabove. DeMarco's testimony describing the threatened action remained undenied at this hearing and Woicik was unable to explain any tenable basis whatsoever, in fact or law, why the Union's position in refusing to postpone an arbitration could justify the assertion of an impasse.[15] Lest there be any doubt that Respondent took the unilateral action regarding the matters coming before the arbitration on October 1, 1980, pursuant to the September 26, 1980, threat, such doubt is dispelled in Woicik's brief to arbitrator Morgan (G.C. Exh. 29) wherein he states, *inter alia:*

> It is the position of the Employer that the unwillingness of the Union to postpone the arbitration until contract items critical to the grievances have been resolved in negotiations has created an impasse, and that unilateral action by the Employer is appropriate under the Labor Act under the circumstances.

It is well established that threatened reprisal based on the exercise of employees' rights under the Act, which would include the exercise of rights set forth in a collective-bargaining contract's grievance procedure provision providing for arbitration would necessarily impinge on employees' exercise of rights guaranteed under Section 7 of the Act. Where, as here, such threat amounts to enforcing a demand that employees, via their collective-bargaining representative, surrender such rights on pain of being denied the equally vital right to engage in collective-bargaining a further violation of the Act is readily apparent. Thus, by the threat of recognizable detriment or harm Respondent sought to force employees to give up their right to a definitely scheduled arbitration thereby violating Section 8(a)(1) of the Act, and by using as the threatened retaliating act itself the cessation of its duty to continue collective bargaining also violated Section 8(a)(5) of the Act, a violation compounded when, pursuant to such unlawful action, it in fact unilaterally

[14] The record is unclear about any production of requested sticky sheets, related to one of the grievances.

[15] Now would the sudden sickness-caused absence of a union negotiating committee member at this meeting come anywhere close to warranting Woicik's assertion that the Union was delaying matters and bargaining in bad faith—a term more aptly applicable to such an unsupported comment.

implemented its own, unaccepted contract provisions.[16] *B. C. Studios, Inc.*, 217 NLRB 307, 312–313 (1975); *Stackpole Components Company*, 232 NLRB 723, 732 (1977); *Inta-Roto, supra*; and *Campo Slacks, Inc., and J & E Sportswear Inc., supra.*

G. *Respondent's Failure To Bargain in Good Faith*

Considering all the foregoing it must be concluded that Respondent clearly harbored no intentions of reaching an agreement with the Union. Respondent has taken positions that have been destructive of any possibility that meaningful or fruitful negotiations might even transpire, let alone lead to agreement on the unresolved issues. *Southside Electric Cooperative, Inc.*, 247 NLRB 705 (1980). Thus it has repudiated the base for negotiating local issues by taking the position that there was no basic agreement at times subsequent to the December 18, 1979, execution of such an agreement. The lack of a genuine desire to reach agreement is evidenced by Respondent's inexplicable withdrawals from agreements considered the stepping stones to a final agreement and is an ominous signal of bad-faith bargaining.

As has been noted before, "The Board has concluded that an employer's refusal to comply with existing contract terms concerning grievances is a violation of Section 8(a)(5) of the Act, [citing the *Massillon Publishing Company*, 212 NLRB 869 (1974)], as are demands to renegotiate matters previously agreed upon citing [*The Shaw College at Detroit, Inc.*, 232 NLRB 191 (1977)]." (Authority cited below.) Such conduct by Respondent, *inter alia*, provides the basis for finding its action evidences bad faith in the instant case. *The Mead Corporation*, 256 NLRB 686 (1981).

As also noted further above, the Union for its part quite clearly and properly emphasized the importance to Respondent of cleaning up its arrearages in contract required payments to the insurance fund, and Respondent's suggestions at the hearing that such may have justified Respondent's unilateral action is wholly without merit, as there was no bad faith on the Union's part even if its efforts could be considered stepped up at the negotiations in question. *Edward Z. Holmes Detective Bureau, Inc.*, 256 NLRB 824, fn. 4 (1981), citing *Chambers Manufacturing Corporation*, 124 NLRB 721, 725 (1959), enfd. 278 F.2d 715 (5th Cir. 1960).

Continuing to violate contractual obligations during negotiations as the Respondent did by failing to remit dues and make contributions to the employees' insurance fund is to foreseeably jeopardize the collective-bargaining process as shown here when employees experienced serious problems with unpaid bills arising from Respondent's arrearages. Cancelling the arbitration provision involving several then current grievances, changing existing employment conditions in wholesale fashion to the point where employment benefits, wages, piece rates, overtime provisions, and almost the entire body of workplace conditions is left unrecognizable, and refusing relevant information to the Union thereby tending to hobble it in efforts to enforce the agreement foreseeably and impermissibly damage any prospect for productive bargaining and industrial relations stability in that workplace, as do Respondent's unlawful threats to do so and such conduct is therefore at odds with statutory mandates and objectives. Respondent has failed to come forth with any justifying reasons for such conduct. I therefore find that the complaint's allegation that Respondent has failed to bargain in good faith thereby further violating Section 8(a)(5) of the Act is strongly supported by the record.[17]

[16] This conclusion is in agreement with the Charging Party's contention on brief, which I find well supported by the record evidence arising from this fully litigated matter, which therefore warrants such determination even though not specifically alleged as a separate violation in the complaint. *Stokely Van Corp., Inc., supra.*

CONCLUSIONS OF LAW

1. Campo Slacks, Inc.; J & E Sportswear, Inc.; JBC of Madera, Inc.; and Joseph Campolong, Sr. (as the *alter ego* for the preceding three entities), are individually and jointly employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[18]

2. The Union is a labor organization within the meaning of Section 2(5) of the Act and has been and is the exclusive bargaining representative of employees in the following unit herein found appropriate for purposes of collective bargaining:

> All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees employed by Campo Slacks, Inc. at its Madera, Pennsylvania, facility; excluding

[17] Early on in this hearing, while undertaking efforts to anticipate or be in a position to understand and thereby rule upon objections, the course of testimony, and the issues before me, I commented midstream in discussion with representatives in an inquiring manner that good-faith bargaining was not *then* an issue in the case. There was an affirmative response to this early inquiry and Respondent counsel Woicik points at this one portion in the entire recorded hearing in his post-hearing brief, noting cryptically that Respondent's good faith in bargaining was not an issue in the case, citing transcript pages continuing the above comments.

Notwithstanding the above, the record is complete on that issue, and no party, it is obvious, was either lulled into not addressing such issue or prevented from litigating same. In this connection, I note further that the consolidated complaint served on the parties contains the allegation Respondent had refused to bargain in good faith and that said complaint allegation was not amended out or striken at the hearing. Further, the conclusion herein that Respondent bargained in bad faith rests upon the undisputed facts underlying the determination that Respondent violated the Act in the numerous specific manners throughly aired at the hearing, which Respondent had every opportunity to meet. Given the complaint notice beforehand that Respondent's bad faith in negotiations was involved in the case, and that the matters underlying a determination of such issue were thoroughly litigated by all parties, I conclude Respondent is in no way prejudiced by the noted brief and incomplete colloquy and that therefore such a determination, strongly arising from all the now assembled evidence, which Respondent did not then or since contest, is clearly justified.

[18] The determination that Joseph Campolong, Sr., as the *alter ego* of these entities, is jointly and personally liable for make-whole remedies flows from undenied record facts establishing that Campolong runs these integrated enterprises, personally has guaranteed corporate debts, loaned it money without seeking repayment, and personally decides whether to continue or put an end to operations, secures the corporation business personally, negotiates labor contracts, and decides issues arising thereunder. He is the only real force behind the corporation structures involved herein, and without whose active presence such would be mere lifeless shells. Accordingly, for any effective remedy one must look "beyond organizational form" because Campolong has so integrated or intermingled his assets and affairs that "no distinct corporate lines are maintained." *Concrete Manufacturing Company and its Directors, Officers and Agents; et al.*, 262 NLRB 727 (1982).

office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.

3. Respondent Campo Slacks, Inc., and the Union are parties to a collective-bargaining agreement effective December 18, 1979, for a 3-year term and covering employees in the unit described above.

4. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) by threatening to change provisions in the collective-bargaining agreement unilaterally unless the Union agreed to postpone scheduled grievance arbitration.

5. Respondent has violated Section 8(a)(5) and (1) of the Act by ceasing to transmit to the Union dues deductions and failing to make insurance fund contributions as required by the collective-bargaining agreement; by unilaterally modifying the collective-bargaining agreement in the numerous respects described in the body of this Decision; by repudiating the entire collective-bargaining agreement; by unilaterally cancelling the arbitration provision in the collective-bargaining agreement; by unilaterally changing established vacation scheduling practices with respect to plant closing; by failing and refusing to honor the Union's requests for relevant information necessary for administration and enforcement of the collective-bargaining agreement; and by ceasing to bargain with the Union over certain matters because the Union would not postpone scheduled grievance arbitration.

6. By the foregoing conduct described above in paragraphs 4 and 5 Respondent has failed to bargain in good faith with the Union thereby further violating Section 8(a)(5) and (1) of the Act.

7. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy Respondent's violations of Section 8(a)(5) and (1) of the Act, I shall recommend, *inter alia*, the following: that Respondent be ordered to cease and desist from failing to bargain in good faith with the Union.

I shall further recommend that Respondent be ordered to pay to the Union's insurance fund all the contributions which it should have made pursuant to the terms of the collective-bargaining agreement. In said connection it is clear that the Union continued to make demands within the 10(b) period for all such amounts due—estimated at totaling $100,000—and that Respondent continued to fail and refuse to make any payments within the 10(b) period. Accordingly, this recommended Order is intended to cover all arrearages, as well as employee costs incurred due to the lack of insurance arising from Respondent's conduct.[19]

I shall also recommend that Respondent be ordered to transmit to the Union all membership dues Respondent has withheld from the wages of the unit employees (or shall withhold) under the collective-bargaining agreement, with interest computed thereon in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651.[20]

It shall further be recommended that Respondent be ordered, upon the Union's request, to rescind all unilateral modifications of the collective-bargaining agreement and conditions of employment, herein found unlawful; and upon the Union's request to reinstate[21] the previously existing provisions and conditions in force at the time of such modifications and to abide by same during the duration of the collective-bargaining agreement and after its expiration unless after said expiration and the absence of any new contract a valid impasse in bargaining as to such a provision or established condition should occur and Respondent has bargained in good faith with the Union up to such time. Further recommended will be that Respondent make payments as necessary to also otherwise restore the *status quo ante*, plus interest as defined above in the reference to *Florida Steel Corporation, supra* and footnoted cases. *Seattle-First National Bank supra.*

In addition, it shall be recommended that Respondent reinstate and honor the arbitration provision in the collective-bargaining agreement and that it process all grievances at such level pursuant to the parties' contract on or after Respondent's cancellation of said provision on April 7, 1981, also making payments, as necessary, to restore employees to their *status quo ante*, plus interest as defined above.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, as amended, I hereby issue the following recommended:

ORDER[22]

The Respondent, Campo Slacks, Inc.; J & E Sportswear, Inc.; JBC of Madera, Inc.; and Joseph Campolong, Sr., Houtzdale and Madera, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing to bargain collectively in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with Pittsburgh Joint Board,

[19] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. I leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy the Board "make whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return to investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Company*, 240 NLRB 1213 (1979).

[20] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[21] In short to restore the *status quo ante* as of December 18, 1979, if so requested by the Union. *The Mead Corporation, supra.*

[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

Amalgamated Clothing and Textile Workers Union, AFL-CIO, as the exclusive bargaining representative of the employees in this appropriate unit:

> All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees employed by Campo Slacks, Inc. at its Madera, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.

(b) Unilaterally implementing collective-bargaining proposals made by it during the term of an existing collective-bargaining agreement.

(c) Unilaterally implementing collective-bargaining proposals made by it as to matters open for negotiations during the term of an existing collective-bargaining agreement but without the presence of a valid preexisting impasse in bargaining.

(d) Refusing to remit to the Union dues deducted under an existing collective-bargaining agreement.

(e) Failing to make required contributions to the insurance fund as provided in an agreement with the Union.

(f) Failing to honor union requests for information necessary and relevant to the Union's administration and enforcement of a collective-bargaining agreement.

(g) Threatening to make unlawful unilateral changes in a collective-bargaining agreement unless the Union agrees to postpone grievance arbitration as contained in a collective-bargaining agreement.

(h) Implementing unilateral changes in existing contract provisions because the Union refuses to agree to postpone scheduled grievance arbitration.

(i) Rescinding the arbitration clause in the collective-bargaining agreement, and refusing to arbitrate grievances.

(j) Abrogating or canceling the entire collective-bargaining agreement.

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed under the Act.[23]

2. Take the following affirmative action:

(a) Upon the Union's request, reaffirm, honor, and apply all the terms in the collective-bargaining agreement with the Union executed on December 18, 1979, including arbitration of grievances, remittance of dues, payments to the insurance fund, and providing information thereto.

(b) Upon the Union's request rescind all unlawful unilateral actions described above and make employees whole for any losses suffered by them as a result of Respondent's unilateral actions in canceling, modifying, and repudiating contract terms and conditions of employment and implementing new contract provisions unilaterally, making payments as necessary to restore the *status quo ante*, plus interest, all as defined in the Remedy section in this Decision.

(c) Make all payments to the insurance fund as required by the collective-bargaining agreement.

(d) Reimburse any employee for any expenses incurred by the employees due to the failure of Respondent to maintain such insurance fund plan in effect by failing to pay the contractually required amounts with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977), and continue to make such payments until either a valid impasse or negotiation of a new agreement in good faith with the Union. This shall include reimbursing employees for contributions they themselves may have made for the maintenance of their coverage for benefits after Respondent unlawfully coerced contributing, for any premiums they may have paid to another insurance company for coverage previously provided by the insurance fund, and for medical bills such fund would have covered. *Hudson Chemical Company, supra.*

(e) Remit to the Union all dues deductions made from employees' wages pursuant to the collective-bargaining agreement.

(f) Furnish to the Union upon request information necessary and relevant to the Union's administration and enforcement of the collective-bargaining agreement as described hereinabove.

(g) Withdraw the threat to make unilateral contract changes unless the Union agrees to postpone grievance arbitration.

(h) Upon request, bargain collectively and in good faith with the Union as the exclusive representative of the employees in the above unit concerning rates of pay, wages, hours, and other terms and conditions of employment, and embody any understanding reached in a signed agreement.

(i) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the payments owed to the Union, i.e., deducted but unremitted dues; payments owed the insurance fund, and all records necessary to analyze the payments owed to employees as set forth in the terms of this recommended Order.

(j) Post at its offices and places of business in Houtzdale, and Madera, Pennsylvania, copies of the attached notice marked "Appendix."[24] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representatives, shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Respondents shall take reasonable steps to ensure that said notices are not altered, defaced or covered by any other material.

(k) Notify the Regional Director for Region 6, in writing, within 20 days of this Order, what steps Respondent has taken to comply herewith.

[23] Respondent's serious violations of Sec. 8(a)(1) and (5) have a deeply disturbing effect on industrial relations stability and demonstrated a settled proclivity to interfere with and inescapably coerce employees in their rights to engage in concerted activities in the form of collective bargaining by their chosen representative, one of the rights lying within the core of Sec. 7, and a broad order as requested is therefore clearly warranted. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."